

**Title 14 Board of Forestry and Fire Protection**

[Notice circulated September 24, 2003]

**15-DAY NOTICE**  
**OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS**  
**AND PUBLIC HEARING**

**Variable Retention-2003**

**PUBLIC HEARING**

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44; the Board of Forestry and Fire Protection (Board) is providing notice of changes made to proposed regulations listed below which were the subject of a regulatory hearing September 16, 2003. These changes are being proposed in response to comments received regarding the proposed changes to the Forest Practice Rules. The Board will hold a public hearing to adopt final rule language. The public hearing is to be held 8:00 a.m. on Thursday, October 9, 2003, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. The Board is providing notice of changes made to proposed regulations affecting Title 14 of the California Code of Regulations (14 CCR) Sections:

**§§ 913.4, 933.3, 954.4 Special Prescriptions**

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the 15 Day Notice. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed action described in the 15 Day Notice to the Board. The written comment period ends at 5:00 PM, on Wednesday, October 8, 2003. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: George Gentry  
Acting Executive Officer  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may be delivered via e-mail at the following address:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

### **UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

At the September 16, 2003 hearing the Board of Forestry and Fire Protection (Board) held a public hearing as provided for in public notice on adoption of regulations providing the opportunity for the preparation and consideration of Road Management Plans in the Timber Harvesting Plan process. During this hearing the Board received comments from the public both in writing and in testimony. The Board considered all written and oral comments before them at the hearing. After the hearing was closed the Board discussed the comments received and determined that they wished to consider adopting some of the proposed rule modification offered either in writing or orally at the hearing. The Board directed staff to provide those potential changes to final regulatory language to the public in a 15 day notice (GC § 11346.8(c)). The Board may adopt any one individual proposed change, a selected group of the proposed changes, or all of the proposed changes. The means of identifying the proposed changes is stated later in this notice. Following is a description and location of proposed changes being considered by the Board:

- Changes made throughout the proposed rule remove repetitive language and make clarifications to allow uniform and clear interpretation of the proposed rule subsections. These changes are expected to improve efficient implementation and interpretation of rule, reducing confusion and improving compliance. No cost or environmental impacts to

regulated community or agencies involved result due to changes to the below listed subsections. Summarized changes and resultant affects by subsection follows:

- **§§ 913.4, 933.3, 954.4 (d) Variable Retention**

Option B is added to standardize the period of time retention trees are to be retained and address consideration of aesthetic enjoyment in the selection of silvicultural treatments in areas specified in 14 CCR§§ 913.1 [ 933.1, 953.1](a)(6)and(7)

- **§§ 913.4, 933.3, 954.4 (d) (2)**

The language was revised to clarify intent of retention standards and revise the minimum size (from ¼ to 1/10 acre) of Aggregated Retention group.

- **§§ 913.4, 933.3, 954.4 (d) (3) (B)**

The language was added to clarify maximum unit size when combinations of Aggregated and Dispersed Retention types are used.

- **§§ 913.4, 933.3, 954.4 (d) (3) (C)**

The language was added to make consistent with definitions under 14 CCR § 895.1.

- **§§ 913.4, 933.3, 954.4 (d) (3) (D)**

The language was revised and added to clarify description of retention trees that may be counted as contributing 1.5 times their actual basal area toward providing retention in excess of the minimum variable retention standard. Revised language eliminates description trees with physical characteristics that indicate an age of origin before 1850.

- **§§ 913.4, 933.3, 954.4 (d) (3) (F)**

The language was revised to clarify the distances between retained trees in the Dispersed Retention type.

- **§§ 913.4, 933.3, 954.4 (d) (3) (G)**

The language was revised to clarify the characteristics of retained trees in the Dispersed and Aggregated Retention types.

- **§§ 913.4, 933.3, 954.4 (d) (3) (H)**

The language was revised to clarify residual basal area requirements when regeneration relies on natural seedfall.

- **§§ 913.4, 933.3, 954.4 (d) (3) (I)**

The language was revised to eliminate necessity of consultation with DFG when Director approves alternatives to standards of subsections 14 CCR § 913.4 [933.4, 954.4](d)(3)(G) and (H).

- **§§ 913.4, 933.3, 954.4 (d) (4) and (5)**

The language was revised to clarify the time frame to meet stocking standards.

- **§§ 913.4, 933.3, 954.4 (d) (6)**  
Subsection reference number was revised to clarify protection to retention trees during timber operation.
- **§§ 913.4, 933.3, 954.4 (d) (8)**  
The language was added to clarify the map or description documentation of the location of aggregated retention groups.
- **§§ 913.4, 933.3, 954.4 (d) (9)**  
The language was added to provide additional methods to designate retained aggregated groups. Boundary marking of aggregated groups is added as a permitted method of designating retained trees.
- **§§ 913.4, 933.3, 954.4 (d) (12) and (12)(A)**  
Language was revised and added to clarify conditions necessary prior to logging an area contiguous to a variable retention harvest area. All regions have the same conditions and clarification is made excluding retention trees as contributing to stocking standards.
- **§§ 913.4, 933.3, 954.4 (d) (13)**  
Language was revised to permit Shelterwood Preparatory Step regeneration method to be applied to the variable retention harvest area prior to the 50 to 80 year stated minimum re entry period.
- **§§ 913.4, 933.3, 954.4 (d) (14)**  
Language was revised to permit Shelterwood Preparatory Step regeneration method to be applied to an adjacent logical logging area prior to the 10 year stated minimum re entry period.
- Alternatives (Options) are included to **§§ 913.4, 933.3, 954.4 (d) (3) (A) and (B), Table 1** to give consideration to increased levels of dispersed retention. Options are included to better address public concerns of retaining sufficient trees and structural elements to fully achieve conservation biology values including connectivity, “life boating” and structural enrichment (as outline in the Technical Documents: Franklin, Kolm, 1997). Options B and C provide an undetermined level of environmental improvements to conservation biology values. Options B and C have undetermined economic impacts to the regulated community compared to option A by committing additional quantities of merchantable growing stock and site production (growing space) to biological values and foregoing economic values derived from timber harvests and maximizing timber growing capacity.

## **AMENDED INITIAL STATEMENT OF REASONS**

### **ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The board has considered additional alternatives (Options B and C) to the original rule proposal (Option A). The additional alternatives (Options B and C) relate to §§ **913.4, 933.3, 954.4 (d) (3) (A) and (B), Table 1** and give consideration to increased levels of basal area of retained trees under the Dispersed Retention type.

**Option B:** Increases Dispersed Retention residual basal area levels by 5 percent for the 40 acre, 60 acre, 80 acre and 120 acre Maximum Size Harvest Areas.

Discussion: This option effectively increased the amount of residual basal area of trees retained following harvest for several of the Dispersed Retention standards. The lowest level retention (>20 percent of Resource Conservation Standards basal area levels stated in 14 CCR § 912.7 [932.7 952.7] (b) (2) / smallest harvest area standards of 20 acres) remains unchanged compared to original rule proposal.

**Option C:** Increases Dispersed Retention residual basal area levels by 5 percent for the 40 acre, 60 acre, 80 acre and 120 acre Maximum Size Harvest Areas. Eliminates Dispersed and Aggregated Retention for the 20 acres Maximum Size Harvest Areas.

Discussion: This option effectively increased the amount of residual basal area of trees retained following harvest for several of the Dispersed Retention standards. The lowest level retention (>20 percent of Resource Conservation Standards basal area levels stated in 14 CCR § 912.7 [932.7 952.7] (b) (2)) / smallest harvest area standards (20 acres) is deleted. This option results in providing a higher minimum level of residual basal area of trees retained following harvest compared to other options.

### **POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Board has not identified any adverse environmental effects from the proposed action. Options B and C provide an undetermined level (if any) of environmental improvements to conservation biology values by retaining additional trees and structural elements to fully achieve conservation biology values including connectivity, “life boating” and structural enrichment (as outline in the Technical Documents: Franklin, Kolm, 1997).

## **CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action

may be directed to:

Board of Forestry and Fire Protection  
Attn: Attn: George Gentry  
Acting Executive Officer  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418

The designated backup person in the event Mr. Gentry is not available is Christopher Zimny, Interim Regulations Coordinator, California Department of Forestry and Fire Protection, at the above address and phone.

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

A copy of the express terms of the proposed regulation is available on request.

A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page:

**[http://www.fire.ca.gov/bof/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/bof/board/board_proposed_rule_packages.html)**.

Additionally, all the information considered as the basis for this proposed regulation (i.e., rulemaking file) is available to the public at the Board's office listed above.

### **TEXT OF MODIFIED REGULATIONS**

In order to clearly indicate those sections proposed for change in this 15-day notice, the text is presented in the following format:

The Board has illustrated changes to the original text in the following manner:

- language originally proposed is UNDERLINED
- additions to the originally proposed language is DOUBLE-UNDERLINED
- deletions to the originally proposed language is ~~SINGLE STRIKEOUT~~

Notice of the 15 day comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or

- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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George Gentry  
Acting Executive Officer  
Board of Forestry and Fire Protection

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